



June 12, 2015

The Honorable Greg Walden
Chairman
Committee on Energy and Commerce
Subcommittee on Communications and Technology
U.S. House of Representatives

The Honorable Anna Eshoo
Ranking Member
Committee on Energy and Commerce
Subcommittee on Communications and Technology
U.S. House of Representatives

Dear Chairman Walden and Ranking Member Eshoo:

We respectfully request that this letter be included in the “Progress Toward a Nationwide Public Safety Broadband Network” hearing record.

NTCA–The Rural Broadband Association (NTCA) represents nearly 900 small rural network service providers that use valuable wired and wireless networks, and other technical and operational assets, to serve the most sparsely populated and remotely located areas of our country. As community-based organizations, NTCA’s members have an established history of working collaboratively with public safety, and an ongoing commitment to supporting their communications needs.

Rural service providers understand first-hand the immense financial, technical and logistical challenges related to operating advanced telecommunications networks in rural and remote areas. As such, they applaud the effort that has been devoted to the FirstNet project. However, NTCA’s members have significant concerns related to FirstNet’s current direction, as outlined in the Special Notice and Draft Request for Proposals (RFP) released on April 27, 2015¹, and the resultant implications for the ability of rural first responders to access the Nationwide Public Safety Broadband Network (NPSBN).

Given the ambiguity in the Special Notice and Draft RFP, overbuilding existing rural

¹ See FirstNet's Nationwide Public Safety Broadband Network (NPSBN), Special Notice and Draft RFP, Solicitation Number: D15PS00295B, released April 27, 2015, available online at https://www.fbo.gov/?s=opportunity&mode=form&id=fa93b913eb397ddb5aafc2506be60a50&tab=core&_cview=1 (last accessed on June 12, 2015.)

assets remains a potential threat. Overbuilding could quickly deplete FirstNet’s limited construction budget. In addition, rural service providers remain concerned about the sale of excess capacity on the FirstNet network. Although this provides an important opportunity for FirstNet to fully utilize and monetize its spectrum assets, the commercial use of excess capacity also may have grave, unintended consequences in skewing the commercial marketplace – which would be particularly harmful for existing rural service providers who operate as carriers of last resort (COLR) in rural and remote areas of the country. Further, given FirstNet’s proposed acquisition process, there is no path forward for rural service providers who wish to partner with FirstNet and make their existing assets available for a more efficient network deployment by FirstNet. Without the assistance and assets of rural service providers, FirstNet may encounter challenges with ensuring efficient and effective network coverage in rural and remote areas. In addition, based upon an ambiguous definition of “rural” and inferior rural coverage milestones and coverage maps, rural first responders may be left behind, without access to the NPSBN.

Overbuilding Existing Rural Assets

Given the lack of detail in the Special Notice and Draft RFP on FirstNet’s plans to inventory and integrate existing assets into the NPSBN, the overbuilding of existing networks and assets looks to be a serious threat if not managed thoughtfully. Overbuilding areas already served by rural providers would be wasteful and unnecessary, as it would quickly deplete the entire \$7 billion network construction budget and thereby jeopardize FirstNet’s ability to create a ubiquitous wireless network for first responders. Congress had the foresight to address this concern within the very authorizing legislation, directing FirstNet as a matter of law to utilize existing commercial infrastructure and assets.² This will allow FirstNet to concentrate its limited financial resources on expanding network coverage, and upgrading network reliability and resiliency to meet public safety grade standards.

Indeed, within the Special Notice and Draft RFP, FirstNet touts the synergies derived from existing infrastructure and assets as an important component to its financial sustainability. NTCA’s members are encouraged to see FirstNet recognize that their networks can contribute to FirstNet’s rural mission. At the same time, NTCA remains concerned that FirstNet has not addressed the mechanics of how it plans to inventory and subsequently integrate existing assets into its network.

To fulfill its statutory obligation and remain fiscally prudent, FirstNet should create a clear, transparent, and comprehensive mechanism for inventorying existing assets—including, but not limited to, the commercial assets owned and operated by small, rural independent service providers—and further clarify now, at the outset of the acquisition process, how it plans to incorporate those existing assets that it identifies into its final network design and implementation plan(s).

Use and Sale of Excess Network Capacity

² Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, 126 Stat. 156, Sections 6206(b)(3), (b)(1)(c) (2012).

In a related issue, rural service providers remain concerned about how FirstNet plans to monetize excess capacity on the NPSBN. The statute is unambiguous in its intent to prohibit FirstNet from selling commercial services to anchor institutions or other end users, including last-mile connectivity and middle-mile capacity.³ However, FirstNet is authorized to enter into a covered leasing agreement (CLA), and the authorized CLA provider can utilize the FirstNet spectrum to provide a commercial, secondary wireless service.

In its Special Notice and Draft RFP, FirstNet has tied CLAs to its network partnership agreements, noting that the final selected contractor(s) will assist FirstNet with constructing the NPSBN and also gain access to FirstNet's spectrum on a secondary basis. Unfortunately, this opens the door to a new competitive wireless provider, which has the ability to undermine the financial health and sustainability of existing commercial networks in high-cost areas of the country, thereby jeopardizing the ability of consumers to continue to access affordable mobile broadband service.

To fully understand the repercussions that stem from monetizing excess capacity on the FirstNet network, it is useful to discuss the central financial tenants of rural telecom deployment. Rural service providers operate in high-cost, low-density areas of the country through a combination of private capital, U.S. Department of Agriculture financing, and federal Universal Service Fund resources. A second commercial network in these areas could entice and thereby remove anchor tenants and other profitable customers from rural carriers' customer bases. "Cherry-picking" the most attractive, high-volume, lucrative customers consequently leaves the most costly-to-serve remnants of the serving area to the carrier of last resort, and thus threatens continued infrastructure investment and *increases* the existing service provider's reliance upon and the burdens on high-cost universal service support. In the worst-case scenario, the existing service provider may be unable to continue to support its network investments and infrastructure loans—reminiscent of the unfortunate consequences that resulted from EAGLE-Net, a broadband stimulus-funded project that overbuilt existing networks in rural portions of Colorado⁴—and, as a consequence, unable to continue to provide commercial mobile broadband service, leaving rural citizens without access to service.

FirstNet should ensure that its CLA partners do not compete against existing commercial networks, particularly in high-cost rural areas where more than one network is not sustainable. At a minimum, any secondary network provider that is allowed to utilize FirstNet's excess capacity should not be given unduly favorable lease terms or rates which enable the operator to compete in the commercial wireless marketplace by offering artificially low subscriber rates. In other words, FirstNet should ensure that, at a minimum, it establishes secondary lease rates and terms that are in line with the prevailing wholesale market rates for spectrum/leasing.

Ability of Rural Carriers to Compete in Network Acquisition Process

³ See Section 6212(a) of the Act. *Also see* Comments of NTCA—The Rural Broadband Association, In the Matter of First Responder Network Authority Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, Docket No. 140821696-4696-01, 79 Fed. Reg. 57058 (rel. Sept. 24, 2014).

⁴ For more on EAGLE-Net, see this June 20, 2013, press release from the House Energy & Commerce Committee, <https://energycommerce.house.gov/press-release/energy-and-commerce-committee-leaders-continue-inquiry-100m-colorado-broadband-stimulus-grant>.

Given the two acquisition approaches proposed in the draft RFP, smaller operators, including NTCA's members, will be unable to participate in the network partnership process; at best, their chance at participation will be indirect to the extent that the national or regional partner chosen happens to undertake to work with smaller providers. A lack of participation from rural service providers may have a negative affect on FirstNet's ability to effectively and efficiently deploy, maintain, and evolve the NPSBN in rural areas of the country.

FirstNet has proposed two potential network acquisition approaches: a nationwide and a state/regional approach. In terms of the nationwide approach, small and rural carriers do not have the scope or scale necessary to construct the NPSBN in its entirety. Further, in terms of the state or regional approach, the FirstNet service area would still extend beyond the established territory of most small business operator(s). As such, given their size and limited resources, it will be difficult if not impossible for small rural carriers to compete for a FirstNet contract(s) without partnering with a large nationwide service provider. For their part, large carriers have no incentive to partner with small rural providers.

Although it may be tempting for FirstNet to partner with only one or two of the large mobile network operators (MNOs) or a significant systems integrator, they do not have the same operational experience in rural and remote areas. Despite their extensive networks, for example, large wireless providers focus their activities around more populated areas, ensuring that they are less likely to have extensive rural technical assets to contribute to the network. They also lack local presence, meaning that mean time to restore and repair can be more difficult in the remote and rural areas that smaller providers call home.

For example, the top 250 Cellular Market Areas contain approximately 74% of the total U.S. population but encompass just 14% of the total U.S. land area. This is a stark contrast to the 40% of the U.S. landmass served by the nation's independent telecommunications companies, and the 5% of the U.S. population served by those same entities. Further, 73% of respondents to the *NTCA 2011 Broadband/Internet Availability Survey Report* indicated that their fixed service competitors were only serving the cities and towns in their service areas. To the extent that national providers do operate in rural areas, MNOs tend to focus their coverage around highway systems, ignoring the surrounding residential areas and rural parts of the country (including state highways and local roads over which many first responders must travel to reach emergency sites). This isolated coverage is not conducive to FirstNet's mission or the needs of rural first responders. In addition, in areas where they do operate, the "national" MNOs often do not own their vertical assets; instead these assets are owned by companies that lease the infrastructure to the MNOs. In rural areas, the MNO backhaul facilities and wired infrastructure often are supplied by rural providers.

That means in many rural areas, a smaller rural-focused operator is the best and perhaps only resource with whom FirstNet might partner with on the construction of the NPSBN. As independent, community-based operators serving the needs of rural America, NTCA's members have significant wireline and wireless assets, as well as human resources, rights-of-way, and technical resources. In addition, rural service providers continually re-invest in their networks, and can upgrade their infrastructure more cost effectively and efficiently than a new entrant into

the service area. Rural service providers also hold licensed spectrum and established customer bases, ensuring that these companies are well positioned to sell a commercial wireless service and thereby enter into a CLA partnership agreement with FirstNet that is financially beneficially for FirstNet.

Rural providers are experts in the terrain and geographic challenges within their service territories; they understand where local public safety coverage is needed most, and how to effectively set wireless assets to meet the end users' communications requirements. Further, when the NPSBN is subject to critical outages via man-made or natural disasters, given their physical presence in rural areas, these providers are "first responders" themselves—they are better positioned than any other carrier or operator to provide on-the-ground network operational and technical support to ensure the FirstNet network is repaired and restored to service as soon as possible.

To maximize reach, leverage expertise, and improve the economies of network deployment, FirstNet should ensure that it seeks out, on a case-by-case basis, the best partners and resources in each area. FirstNet should ensure that in any given area where it decides to enter into a network partnership agreement, it selects the best service provider, with the most reliable network, the highest quality of service, the most advanced network technology, and localized experience and pre-existing relationships with public safety entities.

Given these partnership tenants, FirstNet should revise its network acquisition strategy to ensure that rural service providers can participate in the contract process. FirstNet should create smaller service territories which enable rural service providers to adequately address network coverage requirements.

In a related issue, in regard to the Federal acquisition process, small businesses with limited scope and scale often will have trouble competing against large, international, for-profit companies. As such, a "small business" is quantitatively defined and then set apart to ensure that its bid is given appropriate consideration by Federal decision-makers. Yet the generic definition of "small business" selected by FirstNet in its draft RFP disregards the industry-specific guidance of the U.S. Small Business Administration and will serve to disadvantage small wired and wireless telecommunications providers as they compete for FirstNet network partnerships.

As part of the Department of Commerce, the U.S. Small Business Administration is considered the Federal expert on small business issues. The agency has spent considerable time and effort to research and define various categories of "small business" based upon the services the company provides and the industry it operates within. FirstNet should rely on this intelligence as it looks to define "small business." As such, within its acquisition documents, FirstNet should use the established definitions of Wired Telecommunications Carriers and Wireless Telecommunications Carriers⁵ which correspond to the services the company provides on a commercial basis, and also the services the company is offering to contribute to the NPSBN.

⁵ In regard to the definition of "small business", the U.S. Small Business Administration has created a Table of Small Business Size Standards Matched to North American Industry Classification System Codes. See https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

Network Coverage in Rural Areas

FirstNet has a statutory obligation to address rural coverage, and first responders are in need of network communications connectivity in all areas of the country. However, FirstNet's proposed acquisition approach sets up an urban-rural divide, potentially leaving rural first responders without access to the NPSBN.

Rural consumers have significant emergency and public safety needs just as their urban counterparts do, even as rural areas may face different challenges in the event of emergencies. Rural areas are often the sites of devastating forest fires, floods, and tornadoes, while the presence of military facilities in rural areas raises distinct public safety challenges as well. Oftentimes, rural citizens reside many, many miles from the closest first responder, firehouse, police station, or health care institution. A next-generation broadband-capable network can help to overcome the unique challenges presented by this remoteness, enabling first responders to communicate with one another and with their headquarters' locations. Just as in urban areas, rural first responders need to access criminal databases, transmit a patient's medical data, and send information back to headquarters concerning the specifics of an incident scene. However, today, public safety officials in rural communities experience the same communication challenges as their urban counterparts, struggling to converse with other first responder entities and exchange data in real-time.

To overcome these challenges, the Act requires FirstNet, in carrying out its duties, to devise "deployment phases with substantial rural coverage milestones" that are "consistent with the license granted by the Commission."⁶ The spirit of the legislation was to ensure that rural areas of the country gain access to the NPSBN, and are not left behind their urban counterparts without access to this vital communications and public safety resource.

Unfortunately, the definition of "rural" has not been formalized. Likewise, "rural coverage milestones" remain ambiguous, but FirstNet has tentatively confined rural deployment to only 20% of the urban and suburban areas, which is a low threshold given the need and statutory mandate for rural coverage. In addition, FirstNet has released initial statewide network coverage maps which detail its plans for sparse network availability and throughput in rural areas. Given these initial documents, it is possible that rural first responders will be left without network access.

It is clear from the discrepancy between FirstNet's rural coverage requirements and initial proposals (as defined in the Special Notice and draft RFP) that FirstNet is encountering significant challenges in regard to meeting the needs of rural first responders. This all leads back to the need for FirstNet to partner with existing rural service providers, incorporating their technical assets and strategic experience. In areas where FirstNet deems it too difficult or costly to upgrade existing terrestrial assets for a NPSBN deployment, FirstNet should create roaming agreements with existing commercial networks, ensuring that rural service providers gain access to the best network connectivity available.

⁶ See Section 6206(b)(3) of the Act.

FirstNet Should Revise its Final RFP to Address the Concerns of Small Businesses and Rural Areas

In closing, an integrated NPSBN is the most efficient and effective solution, enabling FirstNet to speed time-to-deployment, decrease implementation costs, and create synergies with existing Federal programs, which provide loans and grants for the construction of broadband infrastructure. It also is consistent with FirstNet's statutory obligations to utilize existing assets, and to adequately address rural coverage.

Unfortunately, given the initial acquisition process as outlined in the Special Notice and draft RFP, rural service providers remain concerned about FirstNet's approach to rural and remote areas of the country. Rural first responders have important communications needs, and they cannot be left behind their urban counterparts. At the same time, FirstNet should not undermine existing rural networks as it looks to develop the parameters which will guide its network partnerships. To assist with meeting coverage objectives in an efficient and effective manner, NTCA's members stand ready to partner with FirstNet.

Sincerely,

David Hoover
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NTCA—The Rural Broadband Association